

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**  
**No. 18-619V**

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MICHAEL SCHWARZ,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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**UNPUBLISHED**

Special Master Katherine E. Oler

Filed: September 25, 2023

*Richard Gage*, Richard Gage, PC, Cheyenne, WY, for Petitioner  
*Catherine Stolar*, U.S. Department of Justice, Washington, DC, for Respondent

**DECISION AWARDING INTERIM ATTORNEYS' FEES AND COSTS<sup>1</sup>**

**Oler**, Special Master:

On May 1, 2018, Michael Schwarz (“Petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act” or “Program”). ECF No. 1 (“Pet.”). The petition alleges that the tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccination that Petitioner received on May 20, 2015, caused him to develop transverse myelitis (“TM”). Pet. at 1-2.

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<sup>1</sup> Because this Decision contains a reasoned explanation for the action in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. §§ 300aa-10–34 (2012)) (hereinafter “Vaccine Act” or “the Act”). All subsequent references to sections of the Vaccine Act shall be to the pertinent subparagraph of 42 U.S.C. § 300aa.

Petitioner filed a motion for interim attorneys' fees and costs on March 23, 2023, requesting a total of \$120,561.40<sup>3</sup>. ECF No. 68 ("Fees App." or "Application"). Respondent filed a response to the Application on April 6, 2023, deferring to me as to whether Petitioner has met the legal standard for an award of interim attorneys' fees and costs. ECF No. 69 ("Fees Resp.") at 2. If I determine that an award of interim fees and costs is appropriate, Respondent "respectfully requests that the Court exercise its discretion and determine a reasonable award for attorneys' fees and costs." *Id.* at 3.

I hereby **GRANT IN PART** Petitioner's application and award a total of **\$117,161.40** in interim attorneys' fees and costs.

## **I. Legal Standard**

### **A. Interim Attorneys' Fees and Costs**

The Federal Circuit has held that an award of interim attorneys' fees and costs is permissible under the Vaccine Act. *Shaw v. Sec'y of Health & Hum. Servs.*, 609 F.3d 1372 (Fed. Cir. 2010); *Avera v. Sec'y of Health & Hum. Servs.*, 515 F.3d 1343 (Fed. Cir. 2008). In *Cloer*, the Federal Circuit noted that "Congress [has] made clear that denying interim attorneys' fees under the Vaccine Act is contrary to an underlying purpose of the Vaccine Act." *Cloer v. Sec'y of Health & Hum. Servs.*, 675 F.3d 1358, 1361-62 (Fed. Cir. 2012).

In *Avera*, the Federal Circuit stated, "[i]nterim fees are particularly appropriate in cases where proceedings are protracted, and costly experts must be retained." *Avera*, 515 F.3d at 1352. Likewise, in *Shaw*, the Federal Circuit held that "where the claimant establishes that the cost of litigation has imposed an undue hardship and there exists a good faith basis for the claim, it is proper for the special master to award interim attorneys' fees." 609 F.3d at 1375. *Avera* did not, however, define when interim fees are appropriate; rather, it has been interpreted to allow special masters discretion. *See Avera*, 515 F.3d; *Kirk v. Sec'y of Health & Hum. Servs.*, No. 08-241V, 2009 WL 775396, at \*2 (Fed. Cl. Spec. Mstr. Mar. 13, 2009); *Bear v. Sec'y of Health & Hum. Servs.*, No. 11-362V, 2013 WL 691963, at \*4 (Fed. Cl. Spec. Mstr. Feb. 4, 2013). Even though it has been argued that a petitioner must meet the three *Avera* criteria -- protracted proceedings, costly expert testimony, and undue hardship -- special masters have instead treated these criteria as possible factors in a flexible balancing test. *Avera*, 515 F.3d at 1352; *see Al-Uffi v. Sec'y of Health & Hum. Servs.*, No. 13-956V, 2015 WL 6181669, at \*7 (Fed. Cl. Spec. Mstr. Sept. 30, 2015).

A petitioner is eligible for an interim award of reasonable attorneys' fees and costs if the special master finds that a petitioner has brought his petition in good faith and with a reasonable basis. §15(e)(1); *Avera*, 515 F.3d at 1352; *Shaw*, 609 F.3d at 1372; *Woods v. Sec'y of Health & Hum. Servs.*, 105 Fed. Cl. 148 (2012), at 154; *Friedman v. Sec'y of Health & Hum. Servs.*, 94 Fed. Cl. 323, 334 (2010); *Doe 21 v. Sec'y of Health & Hum. Servs.*, 89 Fed. Cl. 661, 668 (2009); *Bear*, 2013 WL 691963, at \*5; *Lumsden v. Sec'y of Health & Hum. Servs.*, No. 97-588V, 2012 WL

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<sup>3</sup> The Application states this figure as \$120,561.00. Fees App. at 4. The invoices Petitioner submitted state the total as \$120,561.40. *Id.* at 8. The latter is the sum of all requested line items.

1450520, at \*4 (Fed. Cl. Spec. Mstr. Mar. 28, 2012). The undue hardship inquiry looks at more than just financial involvement of a petitioner; it also looks at any money expended by a petitioner's counsel. *Kirk*, 2009 WL 775396, at \*2. Referring to *Avera*, former Chief Special Master Golkiewicz in *Kirk* found that "the general principle underlying an award of interim fees [is] clear: avoid working a substantial financial hardship on petitioners and their counsel." *Id.*

## **B. Good Faith**

The good faith requirement is met through a subjective inquiry. *Di Roma v. Sec'y of Health & Hum. Servs.*, No. 90-3277V, 1993 WL 496981, at \*1 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). Such a requirement is a "subjective standard that focuses upon whether [P]etitioner honestly believed he had a legitimate claim for compensation." *Turner v. Sec'y of Health & Hum. Servs.*, No. 99-544V, 2007 WL 4410030, at \*5 (Fed. Cl. Spec. Mstr. Nov. 30, 2007). Without evidence of bad faith, "petitioners are entitled to a presumption of good faith." *Grice v. Sec'y of Health & Hum. Servs.*, 36 Fed. Cl. 114, 121 (1996). Thus, so long as Petitioner had an honest belief that his claim could succeed, the good faith requirement is satisfied. *See Riley v. Sec'y of Health & Hum. Servs.*, No. 09-276V, 2011 WL 2036976, at \*2 (Fed. Cl. Spec. Mstr. Apr. 29, 2011) (citing *Di Roma*, 1993 WL 496981, at \*1); *Turner*, 2007 WL 4410030, at \*5.

## **C. Reasonable Basis**

Unlike the good-faith inquiry, an analysis of reasonable basis requires more than just a petitioner's belief in his claim. *Turner*, 2007 WL 4410030, at \*6-7. Instead, the claim must at least be supported by objective evidence -- medical records or medical opinion. *Sharp-Roundtree v. Sec'y of Health & Hum. Servs.*, No. 14-804V, 2015 WL 12600336, at \*3 (Fed. Cl. Spec. Mstr. Nov. 3, 2015).

While the statute does not define the quantum of proof needed to establish reasonable basis, it is "something less than the preponderant evidence ultimately required to prevail on one's vaccine-injury claim." *Chuisano v. United States*, 116 Fed. Cl. 276, 283 (2014). The Court of Federal Claims affirmed in *Chuisano* that "[a]t the most basic level, a petitioner who submits no evidence would not be found to have reasonable basis..." *Id.* at 286. The Court in *Chuisano* found that a petition which relies on temporal proximity and a petitioner's affidavit is not sufficient to establish reasonable basis. *Id.* at 290; *see also Turpin v. Sec'y Health & Hum. Servs.*, No. 99-564V, 2005 WL 1026714, \*2 (Fed. Cl. Spec. Mstr. Feb. 10, 2005) (finding no reasonable basis when petitioner submitted an affidavit and no other records); *Brown v. Sec'y Health & Hum. Servs.*, No. 99-539V, 2005 WL 1026713, \*2 (Fed. Cl. Spec. Mstr. Mar. 11, 2005) (finding no reasonable basis when petitioner presented only e-mails between her and her attorney). The Federal Circuit has affirmed that "more than a mere scintilla but less than a preponderance of proof could provide sufficient grounds for a special master to find reasonable basis." *Cottingham v. Sec'y of Health & Hum. Servs.*, No. 2019-1596, 971 F.3d 1337, 1346 (Fed. Cir. 2020) (finding Petitioner submitted objective evidence supporting causation when she submitted medical records and a vaccine package insert); *see also James-Cornelius v. Sec'y of Health & Hum. Servs.*, 984 F.3d 1374, 1380 (Fed. Cir. 2021) (finding that "the lack of an express medical opinion on causation did not by itself negate the claim's reasonable basis.").

Temporal proximity between vaccination and onset of symptoms is a necessary component in establishing causation in non-Table cases, but without more, temporal proximity alone “fails to establish a reasonable basis for a vaccine claim.” *Chuisano*, 116 Fed. Cl. at 291.

The Federal Circuit has stated that reasonable basis “is an objective inquiry” and concluded that “counsel may not use [an] impending statute of limitations deadline to establish a reasonable basis for [appellant’s] claim.” *Simmons v. Sec’y of Health & Hum. Servs.*, 875 F.3d 632, 636 (Fed. Cir. 2017). Further, an impending statute of limitations should not even be one of several factors the special master considers in her reasonable basis analysis. “[T]he Federal Circuit forbade, altogether, the consideration of statutory limitations deadlines—and all conduct of counsel—in determining whether there was a reasonable basis for a claim.” *Amankwaa v. Sec’y of Health & Hum. Servs.*, 138 Fed. Cl. 282, 289 (2018).

“[I]n deciding reasonable basis the [s]pecial [m]aster needs to focus on the requirements for a petition under the Vaccine Act to determine if the elements have been asserted with sufficient evidence to make a feasible claim for recovery.” *Santacroce v. Sec’y of Health & Hum. Servs.*, No. 15-555V, 2018 WL 405121, at \*7 (Fed. Cl. Jan. 5, 2018). Special masters cannot award compensation “based on the claims of petitioner alone, unsubstantiated by medical records or by medical opinion.” 42 U.S.C. § 300aa-13(a)(1). Special masters and judges of the Court of Federal Claims have interpreted this provision to mean that petitioners must submit medical records or expert medical opinion in support of causation-in-fact claims. See *Waterman v. Sec’y of Health & Hum. Servs.*, 123 Fed. Cl. 564, 574 (2015) (citing *Dickerson v. Sec’y of Health & Hum. Servs.*, 35 Fed. Cl. 593, 599 (1996) (stating that medical opinion evidence is required to support an on-Table theory where medical records fail to establish a Table injury)).

When determining if a reasonable basis exists, many special masters and judges consider a myriad of factors. The factors to be considered may include “the factual basis of the claim, the medical and scientific support for the claim, the novelty of the vaccine, and the novelty of the theory of causation.” *Amankwaa*, 138 Fed. Cl. at 289. This approach allows the special master to look at each application for attorneys’ fees and costs on a case-by-case basis. *Hamrick v. Sec’y of Health & Hum. Servs.*, No. 99-683V, 2007 WL 4793152, at \*4 (Fed. Cl. Spec. Mstr. Nov. 19, 2007).

## **II. Discussion**

### **A. Undue Financial Hardship**

The undue hardship inquiry looks at more than just financial involvement of a petitioner; it also looks at any money expended by petitioner’s counsel. *Kirk*, 2013 WL 775396, at \*2 (finding “the general principle underlying an award of interim fees was clear: avoid working a substantial financial hardship on petitioners and their counsel.”). In this case, Petitioner’s attorney has been working on this case since 2018. Fees App. at 10. Additionally, Petitioner has retained an expert at a substantial cost. *Id.* at 53-54. The Federal Circuit has noted that interim fees “are particularly appropriate in cases where proceedings are protracted, and costly experts must be retained.” *Avera*, 515 F.3d at 1352 (Fed. Cir. 2008).

I also note that the COVID-19 pandemic has had a significant impact on the United States economy and such impact has been recognized by this court. *See Monge-Landry v. Sec'y of Health & Hum. Servs.*, No. 14-853V, 2020 WL 4219821 \*5 (Fed. Cl. Spec. Mstr. Jun. 30, 2020) (recognizing the COVID-19 pandemic's continued disruption of the airline industry in its calculation of appropriate interim fees).

Given these unprecedented economic circumstances, and the time already spent litigating this case, I find that the Petitioner would suffer undue hardship in the absence of an award of interim attorneys' fees and costs.

## **B. Good Faith and Reasonable Basis**

Respondent has not raised any specific objection to the good faith or reasonable basis for this claim and leaves such a determination to my discretion. *See Fees Resp.* at 2-4. I find that the petition was filed in good faith.

With regard to reasonable basis, Petitioner submitted one expert report from pediatric neurologist Yuval Shafir, M.D. Ex. 16. Dr. Shafir opined that the Tdap vaccination Petitioner received cause him to develop TM. *Id.* at 46. Specifically, Dr. Shafir opined that the Tdap vaccine "produced a dramatic auto inflammatory reaction which was initially mediated by the innate immune system for inflammatory cytokines." Ex. 16 at 45. He argued that this led to a local reaction followed by a systemic reaction affecting multiple systems in petitioner's body. *Id.* He proposed several mechanisms by which the Tdap vaccine caused Petitioner's TM, including molecular mimicry, bystander activation, epitope spreading, and polyclonal activation. *Id.*

This constitutes sufficient evidence to establish a reasonable basis for the claim. As there is no other reason to deny an award of interim attorneys' fees and costs, I will award Petitioner's reasonable fees and costs in this instance.

## **C. Attorneys' Fees**

Petitioner retained Mr. Richard Gage of Richard Gage, PC, ("Gage Law") to represent him in this matter. *See generally*, Fees App. Petitioner requests a total of \$89,953.10 in attorneys' fees. *Id.* at 8.

### **1. Reasonable Hourly Rate**

A reasonable hourly rate is defined as the rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Avera*, 515 F.3d at 1348 (quoting *Blum*, 465 U.S. at 896 n.11). In general, this rate is based on "the forum rate for the District of Columbia" rather than "the rate in the geographic area of the practice of [P]etitioner's attorney." *Rodriguez v. Sec'y of Health & Hum. Servs.*, 632 F.3d 1381, 1384 (Fed. Cir. 2011) (citing *Avera*, 515 F.3d at 1349).

*McCulloch* provides the framework for determining the appropriate compensation for attorneys' fees based upon the attorneys' experience. *See McCulloch v. Sec'y of Health & Hum. Servs.*, No. 09-293V, 2015 WL 5634323 (Fed. Cl. Spec. Mstr. Sept. 1, 2015). The Office of



Special Masters has accepted the decision in *McCulloch* and has issued a Fee Schedule for subsequent years.<sup>4</sup>

Petitioner requests compensation for his attorney, Mr. Richard Gage, at the following hourly rates: \$326.00 per hour for work performed in 2018; \$338.00 per hour for work performed in 2019; \$350.00 per hour for work performed in 2020; \$362.00 per hour for work performed in 2021; \$393.00 per hour for work performed in 2022; and \$422.00 per hour for work performed in 2023. Fees App. at 25-30.

Mr. Gage also requests compensation for his colleague, Ms. Kristen Blume, at the following rates: \$270.00 per hour for work performed in 2018; \$338.00 per hour for work performed in 2019 and 2020; \$355.00 per hour for work performed in 2021; \$386.00 per hour for work performed in 2022; and \$422.00 per hour for work performed in 2023. Fees App. at 33-34.

Finally, Mr. Gage requests compensation for paralegal work at the following hourly rates: \$120.00 per hour for work performed in 2018, 2019, and 2020; \$130.00 per hour for work performed in 2021; \$141.00 per hour for work performed in 2022; and \$152.00 per hour for work performed in 2023. Fees App. at 36-42.

With one exception, these rates are consistent with what my colleagues and I have awarded Mr. Gage and Gage Law in the past. *Jimenez v. Sec'y of Health & Hum Servs.*, No. 17-1190V, 2023 WL 3712348, at \*3 (Fed. Cl. Spec. Mstr. May 30, 2023); *Loyd v. Sec'y of Health & Hum. Servs.*, No. 16-811V, 2023 WL 4170791, at \* 3-4 (Fed. Cl. Spec. Mstr. May 30, 2023); *Heilig v. Sec'y of Health & Hum. Servs.*, No. 16-140V, 2023 WL 2320346, at \*4-5 (Fed. Cl. Spec. Mstr. Mar. 2, 2023). In these prior cases, Ms. Blume has been compensated at a rate of \$255.00 per hour for work performed in 2018. That being said, Ms. Blume only billed 0.1 hours of work in 2018. Rather than apply a de minimis reduction of \$1.50 to the requested amount, I will apply the requested rates with the proviso that future requests may be reduced.

## 2. Hours Reasonably Expended

Attorneys' fees are awarded for the “number of hours reasonably expended on the litigation.” *Avera*, 515 F.3d at 1348. Ultimately, it is “well within the Special Master's discretion

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<sup>4</sup> The 2018 Fee Schedule can be accessed at: <https://www.uscfc.uscourts.gov/sites/default/files/Attorneys%27%20Forum%20Rate%20Fee%20Schedule%202018.pdf>.

The 2019 Fee Schedule can be accessed at: <http://www.cofc.uscourts.gov/sites/default/files/Attorneys%27%20Forum%20Rate%20Fee%20Schedule%202019.pdf>.

The 2020 Fee Schedule can be accessed at: [http://www.cofc.uscourts.gov/sites/default/files/Attorneys%27%20Forum%20Rate%20Fee%20Schedule%202020.PPI\\_OL.pdf](http://www.cofc.uscourts.gov/sites/default/files/Attorneys%27%20Forum%20Rate%20Fee%20Schedule%202020.PPI_OL.pdf)

The 2021 Fee Schedule can be accessed at: <http://www.cofc.uscourts.gov/sites/default/files/AttorneysForum-Rate-Fee-Schedule-2021-PPI-OL.pdf>

The 2022 Fee Schedule can be accessed at: <https://www.uscfc.uscourts.gov/sites/default/files/Attorneys%27-Forum-Rate-Fee-Schedule-2022-%28Final%29.pdf>.

The 2023 Fee Schedule can be accessed at: <https://www.cofc.uscourts.gov/sites/default/files/AttorneysForum-Rate-Fee-Schedule-2023.pdf>

The hourly rates contained within the schedules are updated from the decision in *McCulloch*, 2015 WL 5634323.

to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done.” *Saxton ex rel. Saxton v. Sec’y of Health & Hum. Servs.*, 3 F.3d 1517, 1522 (Fed. Cir. 1993). In exercising that discretion, special masters may reduce the number of hours submitted by a percentage of the amount charged. *See Broekelschen v. Sec’y of Health & Hum. Servs.*, 102 Fed. Cl. 719, 728-29 (2011) (affirming the special master's reduction of attorney and paralegal hours); *Guy v. Sec’y of Health & Hum. Servs.*, 38 Fed. Cl. 403, 406 (1997) (affirming the special master's reduction of attorney and paralegal hours). Petitioner bears the burden of establishing that the rates charged, hours expended, and costs incurred are reasonable. *Wasson v. Sec’y of Health & Hum. Servs.*, 24 Cl. Ct. 482, 484 (1993). However, special masters may reduce awards *sua sponte*, independent of enumerated objections from the respondent. *Sabella v. Sec’y of Health & Hum. Servs.*, 86 Fed. Cl. 201, 208-09 (Fed. Cl. 2009); *Savin v. Sec’y of Health & Hum. Servs.*, 85 Fed. Cl. 313, 318 (Fed. Cl. 2008), *aff’d* No. 99-573V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008).

A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec’y of Health & Hum. Servs.*, 102 Fed. Cl. 719, 729 (Fed. Cl. 2011). Special masters may look to their experience and judgment to reduce an award of fees and costs to a level they find reasonable for the work performed. *Saxton v. Sec’y of Health & Hum. Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993). It is within a special master's discretion to instead make a global reduction to the total amount of fees requested. *See Hines v. Sec’y of Health & Hum. Servs.*, 22 Cl. Ct. 750, 753 (1991) (“special masters have wide latitude in determining the reasonableness of both attorneys’ fees and costs”); *Hocraffer v. Sec’y of Health & Hum. Servs.*, No. 99-533V, 2011 WL 3705153 (Fed. Cl. Spec. Mstr. July 25, 2011), *mot. for rev. denied*, 2011 WL 6292218, at \*13 (Fed. Cl. 2011) (denying review of the special master's decision and endorsing “a global – rather than line-by-line – approach to determine the reasonable number of hours expended in this case”).

On review of Mr. Gage’s invoices, I find that the number of hours expended was reasonable and thus no further reduction is warranted.

As a result, I award Petitioner a total of **\$89,953.10** in attorneys’ fees.

#### **D. Reasonable Costs**

Petitioner requests a total of \$30,608.30 in costs: \$27,434.00 for expert fees; \$588.00 for court reporter fees; \$174.89 for medical record requests; \$400.00 for the Court’s filing fee; \$242.61 for shipping costs; and \$1,768.80 for photocopying costs. Petitioner provided documentation of the medical record costs, the Court’s filing fee, and the shipping costs, and these will be paid in full. Fees App. at 46-52. Petitioner did not provide documentation of the court reporter costs or the photocopying costs. However, as these are costs typically associated with litigation and the total is reasonable, these will be paid in full.

##### **1. Petitioner’s Expert Costs for Yuval Shafrir, M.D.**

Dr. Shafrir submitted one expert report in this case. Ex. 16. He requests compensation for 53.83 hours of work at a rate of \$450.00 per hour and compensation for his attendance at the

entitlement hearing at a rate of \$550.00 per hour for 5.84 hours, totaling \$27,434.00. Fees App. at 53-54.

Dr. Shafrir earned his medical degree at Tel Aviv University in 1983. Ex. 17 (“Shafrir CV”) at 1. He is board certified in neurology and in neurophysiology. *Id.* at 2. He completed his residency in pediatrics in 1988 and fellowships in pediatric neurology and pediatric neurophysiology and epileptology in 1991 and 1992, respectively. *Id.* Since 2013, he has held the position of pediatric neurologist at Sinai Hospital in Baltimore, Maryland. *Id.* at 3.

For his work in reviewing records and literature and preparing expert reports prior to 2021, Dr. Shafrir was consistently awarded \$350.00 per hour. *Thompson v. Sec’y of Health & Hum. Servs.*, No. 15-671V, 2022 WL 1075391, at \*6 (Fed. Cl. Spec. Mstr. Feb. 22, 2022) (citing several previous cases in which Dr. Shafrir was awarded \$350.00 per hour for reviewing medical records and literature and preparing expert reports). Dr. Shafrir’s \$450.00 hourly rate has been approved for his work in 2021 and 2022. *Paul v. Sec’y of Health & Hum. Servs.*, No. 19-1221V, 2023 WL 1956423, at \*4 (Fed. Cl. Spec. Mstr. Feb. 13, 2023) (approving Dr. Shafrir’s rate increase from \$350.00 to \$450.00 in 2021 and 2022 based on his “familiarity and longevity with the Program as well as his active clinical and academic practice.”). I find \$450.00 to be a reasonable rate for his work reviewing medical records and literature and producing expert reports in 2021 and later but will reduce his requested rate to \$350.00 for work performed in 2020 and earlier. This results in a reduction of \$3,400.00.

Dr. Shafrir has been compensated at a higher rate for his attendance at entitlement hearings. *Walters v. Sec’y of Health & Hum. Servs.*, No. 15-1380V, 2022 WL 1077311, at \*7 (Fed. Cl. Spec. Mstr. Feb. 23, 2022) (compensating Dr. Shafrir at \$500.00 per hour for his attendance at the entitlement hearing and \$350.00 per hour for his other work on the case); *Whitney v. Sec’y of Health & Hum. Servs.*, No. 10-809V, 2016 WL 4491499, at \*6 (Fed. Cl. Spec. Mstr. July 27, 2016) (same). I find his requested rate of \$550.00 per hour for his attendance at the May 18, 2022, entitlement hearing in this matter reasonable. Accordingly, no further reduction is necessary.

I award Petitioner a total of **\$27,208.30** in attorneys’ costs.

### III. Conclusion

Accordingly, in the exercise of the discretion afforded to me in determining the propriety of interim fee and cost awards, and based on the foregoing, I **GRANT IN PART** Petitioner’s application, as follows:

- A lump sum in the amount of **\$117,161.40**, representing reimbursement of Petitioner’s interim attorneys’ fees and costs in the form of a check jointly payable to Petitioner and Richard Gage, PC.



In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court **SHALL ENTER JUDGMENT** in accordance with this decision.<sup>5</sup>

**IT IS SO ORDERED.**

**s/ Katherine E. Oler**  
Katherine E. Oler  
Special Master

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<sup>5</sup> Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.